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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re J.S., a Person Coming Under the
Juvenile Court Law.

B220838
(Los Angeles County
Super. Ct. No. CK52063)

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

T.P.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County.
Randolph Hammock, Juvenile Court Referee. Affirmed.

Deborah Dentler, under appointment by the Court of Appeal, for Defendant and
Appellant.

Andrea Sheridan Ordin, County Counsel, William D. Thetford, Deputy County
Counsel, for Plaintiff and Respondent.

Mother's three children were declared dependents of the juvenile court based on her physical abuse of one of the children. Mother, T.P., concedes that substantial evidence supports the court's jurisdictional findings and that the court's order removing the two youngest children from her home was justified. She challenges only the sufficiency of the evidence to support the court's order removing her eldest child, J.S.1, from her care, based on his statements that he did not feel in danger and wished to return home. We affirm.

BACKGROUND

Detention Report

Mother's three children are 16-year old J.S.1, 12-year-old J.S.2, and five-year-old T-N.G. On September 19, 2009, J.S.2 walked into the police station and reported that Mother had squeezed his neck with her hands, placed him in a chokehold, squeezed his cheeks until they turned red, and scratched his neck with her fingernails. He was afraid of Mother and did not want to go home. Paramedics treated J.S.2 at the police station.

Police contacted the Department of Children and Family Services (DCFS). Officers told a DCFS social worker that Mother had denied either assaulting or injuring J.S.2, and that she said he was probably injured while wrestling with his older brother moments before leaving home and walking to the police station.

On September 19, 2009, a social worker interviewed the family members. J.S.1 reported that he was in the other room and did not witness the fight but believed that it was J.S.2's fault. J.S.2 had not been obeying orders to clean up his room, was arguing with Mother, and was "acting up" because he had beaten J.S.2 at wrestling. He had not seen Mother ever beat J.S.2, possibly either because he was not home, or was in another room when it happened. "'When [J.S.1] was younger, [he] was whooped with a belt and extension cord by [Mother], [until he] passed out.'" Mother had not beaten him in the last six years and he wished to return home.

J.S.2 told the social worker that he and Mother had argued about cleaning his room. He recalled seeing Mother beat J.S.1 until he lost consciousness. He told the social worker, ““I don’t want to go there, I don’t want to be there, I can’t be there for no type of reason man.””

T-N.G. responded that she was in the bedroom and did not witness J.S.2 fighting with Mother although she had seen Mother hit him on prior occasions. She believed that whatever happened was J.S.2’s fault and that he deserved it. Mother had never hit her, she was not afraid of Mother, loved her, and wanted to return home.

An adult cousin who had been present in the home during the incident said that J.S.2 seemed agitated after losing the wrestling match to J.S.1. The cousin was watching television in the living room when he heard people “yelling” and then observed J.S.2 leave the home.

Mother told the social worker that she had “not touch[ed]” J.S.2. She suspected that a previous DCFS social worker and the maternal grandmother had encouraged J.S.2 to lodge false complaints against her. He balled up his fists and would not stop spraying carpet cleaner in his room so she grabbed the container and pulled it away from him. She then “grabbed” his arm and escorted him outside so that he could “cool down.” She did not know how he was injured. She described an incident that occurred the week before when J.S.2 balled up his fists and pushed her when she asked him to clean up. On that occasion, she also took him outside and told him to “cool off.” Afterward she took him to the police station and obtained information about enrolling him in “boot camp.” Mother felt helpless after J.S.2 said that he wanted to go to “boot camp,” said that it would be like a vacation, and then laughed at her.

The detention report noted that the family had six prior referrals and two prior dependency cases resulting in juvenile court supervision. The first juvenile court case occurred in 2003. Mother and her live-in boyfriend punched J.S.1 in the face numerous times, tied his hands and feet, and beat him with a belt and an extension cord. They released J.S.1 when he stopped breathing and he ran outside and hid in a neighbor’s

backyard. Mother and her boyfriend found him, brought him home, and beat him again. When J.S.1 lost consciousness, Mother took him to the hospital for treatment. Hospital personnel noted that he had marks and bruises covering his entire body from his head to his ankles. Mother was arrested, charged, and convicted of willful infliction of cruel or inhumane corporal punishment of a child. (Pen. Code, § 273d, subd. (a).) The three children remained out of Mother's care until October 25, 2005.

The second substantiated case resulted from a November 2005 incident. The children had been left at home alone, without food, while J.S.2 was sick with flu-like symptoms, and Mother could not be located. The sustained petition alleged caretaker absence and general neglect.

The detention report listed Mother's criminal history, which included an April 2007 conviction for battery on a peace officer while in the performance of his duties (Pen. Code, § 243, (c)(2)) and July 2009 convictions for acts against J.S.2 in July 2007 involving the willful infliction of injury on a child likely to cause injury or death (Pen. Code, § 273a, subd. (a)) and willful infliction of cruel or inhumane corporal punishment of a child. (Pen. Code, § 273d, subd. (a).)

The DCFS placed the children in protective custody and filed a Welfare and Institutions Code¹ section 300 petition, which as amended (and ultimately sustained), alleged serious physical harm under subdivision (a), failure to protect under subdivision (b) and sibling abuse under subdivision (j). As factual support, the petition alleged that Mother abused J.S.2 by choking him, placing him in a chokehold and inflicting marks and scratches to his neck, and that in the past two years Mother had inappropriately physically abused J.S.2 by striking him with a belt, leaving marks on his body; that the children were prior dependents of the juvenile court because of the abuse Mother inflicted on J.S.1; that Mother had a criminal history of convictions for inflicting abuse

¹ Further unmarked statutory references are to this Code.

on a child and that such abuse endangered the children's physical and emotional health, safety and well-being, and placed J.S.2's siblings at risk of similar abuse and harm.²

Addendum Report

On September 23, 2009, the DCFS filed an addendum report which stated that Mother had recently been arrested, while T-N.G. was in the car, for driving without a license and while in possession of a concealed firearm and marijuana.

Detention Hearing

At the September 23, 2009 detention hearing, Mother's counsel requested the court to release J.S.1 and T-N.G. to Mother's custody, arguing that there was no evidence that she had abused these children. She acknowledged that there was some evidence that J.S.2 had been abused, but Mother asserted that the report of abuse was "totally not true."

The DCFS argued that the reports established a prima facie case to detain the children based on the current allegations and Mother's criminal history of child abuse.

The children's counsel noted that T-N.G. stated that she missed Mother and wanted to go home and that J.S.1 had also stated that he wished to go home and did not feel that he was at risk of abuse. The children's counsel, nevertheless, requested the court to detain all three children.

The court found that the reports constituted prima facie evidence that all three children were persons described in section 300, subdivisions (a), (b), (g) and (j), found that all three were at risk of serious harm if not removed from Mother and ordered them detained and placed in shelter care. The court authorized monitored visits for the parents.

Jurisdiction Report

A social worker interviewed Mother and the children for the jurisdiction report. J.S.1 described the incident between J.S.2 and Mother on September 19, 2009. He said that Mother and J.S.2 started arguing when she told him to clean up his room. "He told

² The petition also alleged under section 300, subdivision (g) that the fathers had provided inadequate support. Father S. is incarcerated and serving a lengthy sentence for murder and father G. lives in Houston, Texas. Neither father is a party to this appeal.

her he is not going to do it. They were going back and forth arguing. He said get your hand[s] off of me. He kept saying don't touch me. My sister was in the living room with me and cousin. I heard my mother say, your [sic] trying to spray me with this stuff. I heard a lot of scuffling against the cabinets. She usually puts us on punishment. [J.S.2] talks back a lot. Sometimes but not all of the time. I don't believe she choked him. She might have hit him. I want to live with my mother.'"

T-N.G. reiterated that Mother had never hit her and that she wanted to go home.

J.S.2 said that he was afraid of Mother and did not want to live with her. He remembered that she had beaten J.S.1 with an extension cord until he passed out and he did not want that to happen to him.

Mother continued to deny that she had hurt J.S.2. As she described the incident, J.S.2 got upset that J.S.1 was getting the best of him at wrestling and she told him to stop playing before things got "out of control." She touched him on the arm to lead him out of the room and he tried to spray her with carpet cleaner. She grabbed the spray can from him and took him outside to calm down. She did not "touch" him, did not know how he received scratches on his neck, stated that she could not scratch someone with her long acrylic nails, and assumed he had received the scratches while wrestling with J.S.1.

Mother acknowledged that she went to jail on May 18, 2009, was released in August 2009, and had been placed on four years' probation. She explained that she was driving a friend's car and did not know that her friend had a gun and marijuana in the car. She denied that she had beaten J.S.1 with an extension cord until he passed out. She acknowledged beating him, but said that J.S.1 passed out because he had not eaten lunch that day.

The DCFS recommended that the court declare the three children dependents, order them removed from Mother's custody and suitably placed. The DCFS recommended that no family reunification services be offered Mother.

Last Minute Information Report

On November 13, 2009, DCFS submitted a “last minute information” report which provided the details of Mother’s arrest and conviction for battery on a peace officer in July 2007. According to the police report, Mother and a security guard at the Department of Public Social Services were both attempting to assist a woman who needed medical attention. Mother refused to move out of the way and began cursing at the guard. When officers came to assist the guard, Mother resisted arrest and struggled with the officers. During the struggle, and the officers’ attempt to handcuff her, Mother scratched one of the officers with her fingernails. The officer sought medical treatment for the scratches.

Jurisdiction Hearing

The court held a contested jurisdiction hearing on November 16, 2009. The court admitted the detention report of September 23, 2009, the jurisdiction report of October 14, 2009, and the “last minute information” report of November 16, 2009.

J.S.2 testified at the hearing. He said that on September 19, 2009, he was at home with Mother, his brother, sister and cousin when Mother asked him to clean up his sister’s room. He could not remember the exact words used, but remembered that they were arguing in the kitchen. Mother put her arms around his neck, held him in a chokehold, and scratched him on the neck with her fingernails. He struggled to free himself from her grip and, once she released him, he grabbed a can of carpet cleaner to spray at her to defend himself. The fight made him feel hurt, upset and mad, so he went to the police station and decided to stay there until “they got everything situated.” He cried throughout the incident and continued to cry while at the police station.

J.S.2 said that in the last two years Mother had hit him four or five times with a belt. She usually hit him on his behind over his clothing, but once she hit him when he only had on underwear and that the belt had left red marks on his body which lasted one or two days. He said that he did not want to go home, that he “[j]ust don’t want to be there, and don’t want that to happen no more.”

J.S.1 also testified at the hearing. Mother and J.S.2 were arguing in the kitchen and he heard J.S.2 tell her “[g]et your hands off of me.” He heard sounds of scuffling and of bumping into kitchen cabinets. On an earlier occasion, J.S.2 told him that Mother had given him a “whooping” with a belt, but he had not witnessed the beating, either because the “whooping” occurred in another room or because he was not home. He remembered when Mother beat him in 2003 but said that since that day he had received no further beatings or other physical discipline. J.S.1 said that now when he and Mother have disagreements either they argue or he leaves and goes for a walk. The only thing he disliked was that when they were arguing Mother had a habit of putting her face within inches of his face and “yelling and screaming” at him.

Mother testified at the hearing. She said that J.S.2’s school reported that he was rude, disrespectful, questioned authority, and refused to listen or follow directions. His behavior was the same at home. She disciplined him by denying him television or phone privileges, by making him stay in his room, or by giving him extra chores. Since she went to jail in May 2009, J.S.2’s behavior had become even worse. He had become spoiled and, when he did not get his own way, became mad, defiant, and refused to perform chores that he did not want to do.

On the day of the incident J.S.2 was upset after losing to J.S.1 at wrestling and came into the kitchen, grabbed a can of carpet cleaner and said he was going to kill his brother. She grabbed the spray can out of his hand and escorted him outside. She denied choking J.S.2 and denied that she had physically disciplined J.S.2 in the past two years by beating him with a belt. She said that instead she had “held him down” and “popped him on his butt with [her] hand.” Mother admitted that during arguments she sometimes got up close to J.S.1’s face and raised her voice.

Mother acknowledged that she had a criminal conviction for beating J.S.1 in 2003. She also recalled a 2007 incident involving physical abuse of J.S.2. He reported to school officials that Mother had beaten him with a belt. School officials took J.S.2 to the police station where Mother and J.S.2 were interviewed by a DCFS social worker. At the

time, Mother had an open dependency case and the DCFS did not file a new case or require her to complete any additional programs. She, however, acknowledged that in July 2009 she pleaded no contest to charges of beating J.S.2 in 2007 involving the incident school officials reported to police, but claimed that there was no factual basis for her pleas. She also acknowledged that in April 2007 she had been arrested, charged, and convicted for battery of a peace officer.

The court found J.S.2's testimony "very credible," "very honest and straightforward." The court did not find J.S.1's testimony very credible, and thought he seemed defensive, defiant, and protective of Mother. The court did find credible, however, J.S.1's testimony that Mother got close to his face and shouted at him during arguments. The court found Mother "to be very calm" and "logical," but did not believe her, stating that "[c]hildren don't usually go out crying to the police station, and report a crime about abuse" The court stated that the evidence of the 2003 charges involving J.S.1 was too remote to consider in its current ruling, but concluded that evidence of the 2009 convictions for child abuse against J.S.2 in 2007 and the 2007 conviction for battery on a peace officer relevant and probative of her current potential for violence. The court told Mother, "You obviously have anger management issues which are not being controverted."

The court sustained the amended allegations under subdivisions (a), (b), (g) and (j), declared all three children dependents, found by clear and convincing evidence that the children would be in substantial danger of abuse if returned home, and that there were no reasonable means to protect the children without removing them from the home. The court offered Mother family "reunification like" services and set a hearing date for a progress report and to determine whether family reunification services should be denied.

Mother appeals from the order.

DISCUSSION

Mother concedes that substantial evidence supports the court's jurisdictional findings with respect to all three children, and concedes that for J.S.2 and T-N.G. the

court's order removing them from her care was justified. She challenges only the court's order removing J.S.1 from her custody, contending there was no substantial evidence that he was at risk of physical or emotional harm, and no substantial evidence that there were no reasonable means to protect him if he remained in her care. We disagree.

Section 361, subdivision (c)(1) provides that “[a] dependent child may not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence of any of the following circumstances . . . :

“(1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody. . . . The court shall consider, as a reasonable means to protect the minor, the option of removing an offending parent or guardian from the home. The court shall also consider, as a reasonable means to protect the minor, allowing a nonoffending parent or guardian to retain physical custody as long as that parent or guardian presents a plan acceptable to the court demonstrating that he or she will be able to protect the child from future harm.”

An order removing a dependent child from a parent pursuant to section 361 is reviewed for substantial evidence. (*In re Paul E.* (1995) 39 Cal.App.4th 996, 1005; *In re Jeannette S.* (1979) 94 Cal.App.3d 52, 58-59.)

The same evidence that Mother concedes was sufficient to justify removing J.S.2 and T-N.G. from her care constitutes substantial evidence that there was a substantial danger to J.S.1's physical and emotional health and safety if not also removed. Mother has, as the court found, “obvious[] anger management issues.” The evidence also showed that when angry she uses physical force. Although she had apparently not beaten J.S.1 in the six years since her criminal conviction for inflicting cruel and inhumane corporal punishment on him, she had, within the last two years, beaten J.S.2 several times with a

belt and once sufficiently severely that the belt strap left marks on his body for a day or two. If J.S.1 were permitted to remain at home there is a considerable risk that he would again become a victim of her anger given Mother's propensity for physical violence, if, like J.S.2, he defied orders to clean up his room, or acted disrespectfully toward her, as he admitted he sometimes did.

Mother points out that J.S.2 is at the same difficult stage of life and approximate age that J.S.1 was when his behavior provoked the beating. She claims now that J.S.1 is older and has "settled down" he is less likely to behave poorly and to incur her wrath. Mother's physical violence because of her uncontrollable anger, however, is not limited to 10 to 12-year-old male children. In 2007, Mother was convicted of battery on a peace officer who had annoyed her. When she got upset by a security guard's request to move out of the way so that he could attend to an ailing patron in the welfare office, Mother fought and struggled with the guard and later the officers who arrived to assist the guard. While resisting arrest she scratched one of the officers with her fingernails sufficiently deeply that the officer required medical treatment. This conviction shows that Mother's uncontrollable anger can be directed at anyone and that the trigger to prompt her to violence need not be substantial.

Mother points out that although J.S.1 stated that he did not like it when she "yelled and screamed" in his face, he said that this behavior did not make him feel at risk of harm from her. Mother also points out that J.S.1 is older than J.S.2, presumably able to protect himself, and capable of leaving home if he feels in danger. But even a 16-year-old should not be required to do either. The basic premise underlying the entire dependency system is "to provide maximum safety and protection for children . . . who are at risk of . . . harm." (§ 300.2.) Furthermore, the evidence showed that the younger J.S.2 was also able to leave home, but not before being physically attacked by Mother. In other words, the evidence shows that age is not determinative of whether the child is capable of leaving home and further shows that the ability to leave home is an inadequate safeguard

against Mother's violence. In any case, "[o]ne of the goals of dependency is to protect a child before the harm takes place." (*In re Cole C.* (2009) 174 Cal.App.4th 900, 918.)

There was no evidence of alternative means to protect J.S.1 from Mother's physical abuse without removing him from her care. His father is not available as an alternative placement for him. Mother's history of child abuse is substantial yet the evidence shows that she has not taken responsibility for her actions, or steps to improve her parenting skills. She claimed that J.S.1 in 2003 lost consciousness only because he had not eaten anything for lunch. She denied the current allegations that she had choked, squeezed, and scratched J.S.2. The court could have reasonably found that despite whatever Mother might have learned during her prior dependency cases, she had not come to terms with, or modified, her violent behavior, and thus removal of all three children, including J.S.1, was required for their protection.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, J.

We concur:

MALLANO, P. J.

CHANEY, J.